

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES**

CHARTER COMMUNICATIONS, LLC

and

JONATHAN FRENCH  
an Individual

Case 07-CA-140170

and

RAYMOND SCHOOF  
an Individual

Case 07-CA-145726

and

JAMES DEBEAU  
an Individual

Case 07-CA-147521

*Darlene Haas Awada and Judith A. Champa, Esqs., for the General Counsel.  
Henry E. Farber and Taylor S. Ball, Esqs. (Davis Wright Tremaine, Seattle, Washington)  
for the Respondent.*

**DECISION**

**STATEMENT OF THE CASE**

Arthur J. Amchan, Administrative Law Judge. This case was tried in Bay City, Michigan on April 26-29, May 31-June 3, and August 15-16, 2016. On January 26, 2016, the General Counsel issued a consolidated complaint predicated on the charges filed by Jonathan French, Raymond Schoof and James Debeau. The complaint alleges that Respondent violated Section 8(a)(3) and (1) by terminating the 3 charging parties. It also alleges many Section 8(a)(1) violations that allegedly occurred between July and October 2014.

Given Respondent's contention that most of the Section 8(a)(1) allegations in the complaint are barred by Section 10(b) of the Act, an exposition of when the charges were filed and what they alleged is warranted in this case. Jonathan French filed his initial charge on November 3, 2014 stating that he was terminated on October 14, 2014 and that 2 supervisors and a manager told him that he was "outed" as the "mastermind" behind union activity amongst Respondent's employees. On November 18, 2014, French filed an amended charge alleging that Supervisor Rob Lothian told him that Respondent was aware of his union activities and

threatened him with termination to discourage these activities. French also alleged that Respondent terminated him on October 14, 2014 in retaliation for his organizing activities.

French filed a second amended charge almost a year later, on October 29, 2015, alleging a host of Section 8(a)(1) violations by Respondent, including unlawful surveillance, soliciting grievances, threats and interrogation between July and October 2014. He also alleged that Respondent in July 2014 assigned him and 3 other field auditors, Charging Parties Raymond Schoof and James Debeau, and Kent Payne to remote areas to isolate them from other employees in order to discourage union activity.

French alleged in this charge that in mid-July 2014, manager Greg Culver interfered with his Section 7 rights by subjecting him to closer scrutiny, (complaint paragraph 10). French filed a third amended charge on November 18, 2015 alleging among other things, that Respondent violated the Act in maintaining an overly broad professional conduct rule and instructing employees to not to discuss a disciplinary investigation with other employees..

On February 3, 2015, Raymond Schoof filed a charge alleging that he also had been fired on October 14, 2014 due to alleged union activity. On March 4, 2015, James Debeau filed a charge alleging that he was discharged the same day for alleged union activity.

On the entire record,<sup>1</sup> including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

## FINDINGS OF FACT

### I. JURISDICTION

Respondent provides video, internet and phone service to customers throughout the United States. This case involves employees working out of its offices in Saginaw and Bay City, Michigan. In 2015 Respondent derived revenue in excess of \$500,000 and purchased and received goods valued in excess of \$5,000 at its Saginaw, Michigan facility directly from points outside of Michigan. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES<sup>2</sup>

On or about October 14, 2014, Respondent terminated the employment of all three charging parties. At the same time, it terminated one of their immediate supervisors, Shawn Felker and his immediate boss, Terry James (TJ) Teenier, II, manager for plant security and technical quality assurance for the entire state of Michigan. In their termination meetings, none of these individuals were told specifically why they were being fired.

<sup>1</sup> Tr. 70 line 4 should read Darlene, not darling. Tr. 1473, line 11 should be Farber, not Haas-Awada.

<sup>2</sup> I have not taken the testimony of any witness in this case at face value. Each and every one of them has a bias. What I have credited is often evidence that is corroborated by Respondent's documents and uncontradicted testimony by the General Counsel's witnesses on what I regard as the principal issues in this case.

The termination notices given to the charging parties stated they were being fired for violations of Charter's Code of Conduct and Employee Handbook and in Debeau's case, Charter's timekeeping policy, G.C. Exhs. 6, 14, 16. When Jon French asked human resources specialist Stephanie Peters how he violated these policies, she refused to be more specific, Tr. 77.

In Respondent's internal investigation reports, which were not give the charging parties, the only specific reasons given were dishonesty during an investigation, (Schoof) Exh. R-10; being disrespectful and uncooperative during an investigation and lying with the intent of damaging another employee's credibility (French), Exh. R-11; and doing non-Charter work on company time at the direction of Teenier and being dishonest when questioned during an investigation, Exh. R-13 (Debeau).

Charging Parties French, Schoof and Debeau were 3 of the 4 field auditors assigned to Respondent's Saginaw, Michigan office. Kent Payne was the fourth field auditor.<sup>3</sup> Their jobs required them to inspect residential property to determine whether the customers were receiving more services from Respondent than those for which the customer was paying. Other field office employees working out of the Saginaw office were broadband technicians who installed the hardware necessary to receive Respondent's services and performed service calls. Several other employees were technical quality assurances employees, whose job it was to check on the work of the line technicians.

The Saginaw field auditors reported to supervisor Shawn Felker, whose geographic responsibilities included Saginaw and points south, until sometime shortly after September 2, 2014, G.C. Exh. 9. Then they were reassigned to work under supervisor Rob Lothian, whose responsibilities included Bay City, Michigan and points north. Felker and Lothian reported to Terry Teenier, manager for plant security and technical quality assurance. Other supervisors in Michigan, responsible for other geographic areas, also reported to Teenier. Since sometime in 2013, Teenier began reporting to Greg Culver, director of plant security and technical quality assurance. Culver's responsibilities extended beyond the State of Michigan.

#### *Evidence of the union and other protected activities of the Charging Parties*

The record evidence with regard to the union and other protected activities of Jonathan French is much different than the evidence regarding Ray Schoof and James Debeau. There is substantial evidence of protected activity on the part of French, Respondent's knowledge of those activities and animus towards French as a result. With regard to Schoof and Debeau there is little evidence of any of the elements that generally support a Section 8(a)(3) violation.

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<sup>3</sup> Respondent issued Payne a disciplinary warning on October 15, 2014 as a result of its investigation of Teenier, Felker, Schoof and Debeau. French's termination was also a result of the investigation, not the conduct being investigated.

*Jonathan French's union activities, suspected union activities, Respondent's knowledge of those activities and evidence of animus towards him as a result,*

From 2006 to 2009, Jonathan French worked for a contractor, RCH Cable of Saginaw, Michigan, which did work for Respondent. In August 2012, Respondent hired French as a field auditor. Respondent asserts that it fired French on October 14, 2014 for two reasons: 1) fabricating a story that supervisor Rob Lothian had told him all about a confidential investigation that Respondent was conducting, and 2) fabricating a story that Lothian had a gun at work, Tr. 1426-27.<sup>4</sup>

In about, or slightly before June 2014, French contacted Brian Groom, an organizer for the International Brotherhood of Electrical Workers (IBEW). As a result of French's discussions with Groom, a friend of French, who was not an employee of Respondent, placed union flyers on cars parked in the lot of Respondent's Bay City office on June 17, 2014. A month later, on July 15, 2014, Groom and two other union organizers passed out union flyers just off company property at Charter's Saginaw office.

On July 15, several supervisors, including Chad Erskine and Shawn Felker, went out into the parking lot to observe the distribution of flyers. Erskine asked Felker if Jonathan French worked for him. Erskine told Felker that French's name had been dropped as one of the people orchestrating the distribution of the flyers, Tr. 854.<sup>5</sup>

Respondent reacted to the July 15 hand billing by instituting daily phone calls about union activity. Less frequent calls continued until August 7. While the calls were in part designed to discover whether any employees were dissatisfied with their working conditions, they were also clearly designed to determine which, if any, employees were in contact with the IBEW.

On July 15, participants in the call included Harth Goulette, human resources director for field operations personnel in Michigan, David Slowik, a vice-president for Michigan, Sean Hayes, a vice-president for Michigan field operations, Joseph Boullion, Regional Vice-President, Greg Culver, regional plant security director, and T.J. Teenier, manager for plant security and quality assurance for Michigan. Goulette's notes indicate that these participants discussed the flyers. Slowik noted that they were identical to those passed on in Bay City on June 17. The discussion at one point focused on John French. Goulette's notes, G.C. Exh. 23, indicate the following observations by Sean Hayes:<sup>6</sup>

<sup>4</sup> Stephanie Peters, a human resource generalist, testified that French was terminated in part for knowing that other employees were doing non-company work on company time and not reporting it, Tr. 637-38. There is absolutely no evidence that French knew anything about these matters until supervisor Rob Lothian told him about some of them on September 30, 2014.

<sup>5</sup> Erskine testified on August 15, 2016. He admitted to speaking to Felker on July 15 and did not contradict Felker's testimony regarding his remarks about French.

<sup>6</sup> Hayes is the direct supervisor of Greg Culver. He was part of a collaborative effort in deciding to terminate French, Schoof, Debeau, Felker and Teenier, Tr. 720, 1430, 1707, 1745. Hayes was provided with Stephanie Peters' investigative report, G.C. Exh. 40. Hayes, who still works for Respondent, did not testify in this proceeding.

Greg Culver denied that Hayes played any role in the decision to terminate the 5 employees. Culver

French-Friends w/Sag techs \*pull review & time card  
 Likes to stir the pot  
 Degree from CMU

5 Hayes also wanted the review and time card pulled for Ryan Lange, a broad band technician.

Boullion said something about getting a “friendly list.”<sup>7</sup>

10 G.C. Exh. 23.

David Slowik made notes of a call the date of which is unclear, G.C. Exh. 34. I infer that despite the date of July 14, it is from a conference call occurring on July 15 or 16. His notes contain the following observations:

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After a line from the name Shawn Felker (then French’s immediate supervisor) Slowik wrote:

20

Jonathan French-a/ft/tqa<sup>8</sup>-is trouble-  
 Name was brought up-trying to get union  
 Ryan Lange-BBT<sup>9</sup>-trouble maker-listened to Jonathan

Further down the page is a note “TJ-talk to Jonathan French”

25

VP Boullion instructed Teenier to talk to French because his name came up as an instigator of the union flyers, Tr. 381.<sup>10</sup>

30  
35

On July 17, Greg Culver rode with French on his route all morning. Brian Rock, Regional Director for Field Operations, rode with Ryan Lange, previously identified by Respondent’s management as a “trouble-maker who listens to French.” Although these “ride-a-longs” were not uncommon events, these particular ones were related to the suspicions that French and Lange might be union supporters. Culver was to report to Harth Goulette as to the results of his “ride-a-long” with French, G.C. Exh. 24, 26. There is no evidence that Culver made such reports routinely after a “ride-a-long,” Tr. 1660-69.

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testified that he kept Hayes informed of why he was spending time in Bay City and nothing else. Based on Goulette’s testimony, I find Culver’s testimony regarding Hayes involvement incredible. What role Hayes played in the decision making is a mystery as far as this record is concerned. There is no indication, for example, with whom Hayes may have discussed the terminations. However, the record makes clear that Hayes, as well as other top Charter managers, bore substantial animus towards French in part due to his union and other potentially protected activities.

<sup>7</sup> I infer that “friendly” means employees known to oppose unionization.

<sup>8</sup> This incorrectly identifies French as a full time TQA employee, rather than a field auditor.

<sup>9</sup> Broad band technician

<sup>10</sup> Boullion did not testify in this proceeding. Teenier’s testimony on this point is uncontradicted.

Goulette made notes of Culver's report on July 17, G.C. Exh. 29:

French- Arrogant-felt entitled to applied positions  
 Tech passed up for promo-Carl Makowski  
 No desire in BBT. TQA Documents in his pocket  
 Wants nothing to do with Union-seems to know a lot about other areas  
 Asked if he was scheduled to be there today?

Ray Schoof-no concerns-loves Charter

Shane Robinson-Had lunch-pulled aside  
 Don't think he is a union supporter.

Further down there is a note about Manager T.J. Teenier:

Seems to be connected to Shane  
 After IBEW-TJ called Shane & French & told names brought up.

In July 2014, TJ Teenier assigned French to work around Cass City and Caro, Michigan, which are located east of Saginaw, in the thumb of Michigan.<sup>11</sup> Cass City is about 45 miles from Saginaw; Caro is about 30 miles east. French had also worked in the Cass City area in 2013. The other 3 Saginaw field auditors were also reassigned to areas away from Saginaw. James Debeau was assigned to work near Alma (west of Saginaw);<sup>12</sup> Kent Payne was assigned to work in Chesaning, southwest of Saginaw and Ray Schoof was assigned to work in St. Johns, further southwest of Saginaw. The General Counsel alleges in complaint paragraph 13 that this was done for discriminatory reasons in violation of Section 8(a)(3) and (1).

Shawn Felker testified that Greg Culver called and told him that he should move Jon French as far away from the Saginaw market as possible. Further, he testified that Culver told him to move the other three field auditors to outlying areas as well, so that moving French wouldn't look suspicious and to keep the four as far away as possible from each other, Tr. 860. If credible, this call would have been made on the evening of July 16, the evening before Culver rode with French on his route, and would support the allegations in complaint paragraph 13.

After 2-3 weeks, the field auditors returned to the Saginaw area to work. During the first week of September, Teenier reassigned French, Debeau and Schoof to Rob Lothian's supervision, G.C. Exh. 9. Lothian was unhappy in having French assigned to him. He told Teenier and Felker that "you've given me the guy that caused all the union problems," Tr. 869.<sup>13</sup>

<sup>11</sup> Just as a map of Italy resembles a boot, a map of Michigan resembles a mitten. The area north of Port Huron is often referred to as the thumb.

<sup>12</sup> There is some variation in the evidence as to where the field auditors, other than French worked during this period. However, it is clear they all worked some distance away from Saginaw. Debeau testified he worked in Ithaca, MI, which is very close to Alma. Felker testified Debeau was assigned to work in Ovid, which is also close to Alma. Schoof testified that he worked in St. Johns, MI.

<sup>13</sup> I credit Felker's testimony in this regard because Lothian said essentially the same thing to Stephanie Peters on October 3, R-9, p. 12.

On Tuesday, September 30, 2014, Rob Lothian met French in the field to do a safety inspection of French's truck. Afterwards, they had a long conversation:

We talked for quite a while. He asked me if I  
 5 knew what was going on. And I told him no. And then he said  
 that, you know, I seemed like kind of a loner, like I really  
 don't talk to the people in the department much or, you know,  
 hang out with them after work. And, you know, I told him,  
 you know, I come to work and do my job, go home.

10 Then he told me that I was outed as the union  
 mastermind. And I kind of was taken aback that, taken aback  
 by --

Q. Did you say anything in response?

A. I told him that it wasn't me, but I wasn't going to rat  
 15 anyone out. He told me, he asked me again if he could trust  
 me. And I said, yeah, you know, what's on your mind? He  
 told me that he went to human resources with a story that  
 Shawn Felker had told him.

20 Shawn Felker told Rob that he discovered Ray Schoof, Jim  
 Debeau, and TJ Teenier apparently laying sod on company time.  
 He told me that the landscape of the department was going to  
 change. You know, being as that you're the -- you know, you  
 were outed as the union mastermind, you know, you should get  
 on my side with this because people were going to get fired.

25 He told me that years ago, he became supervisor by  
 squashing a union drive, going around and asking people what  
 they really wanted. And he was shocked that all they wanted  
 were gloves and boots and stuff.

30 Q. Did you say gloves?

A. Yeah, like work gloves.

Q. Okay.

A. You know, he also went into like his finances, which I  
 35 thought was just weird. But not wanting to poke the bear, I  
 listened. Something to the effect of he makes \$5,000 a month  
 now, and it doesn't matter whether or not he -- if he ends up  
 getting fired out of this, it won't matter, because with his  
 IRA money and a part-time job or unemployment, he would be  
 right back at that mark.

40 And as a 43-year-cable employee, he was very upset that  
 he wasn't going to receive free cable. He was not happy  
 about that at all. It was a pretty lengthy rant.

Tr. 67-68.<sup>14</sup>

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<sup>14</sup> French's testimony about this conversation is uncontradicted and therefore credited. Although, I do not draw an adverse inference from Respondent's failure to call Lothian as a witness, he was available to

On September 30 or October 1, French called Ray Schoof and told Schoof about his conversation with Lothian. Schoof called Stephanie Peters, who conducting an investigation of Lothian's allegations and told her about his call from French on the evening of October 1.<sup>15</sup>

On October 1, Peters summoned French to an interview the following morning, October 2.

The investigation leading to the termination of Teenier, Felker, Schoof, Debeau and French

On September 19, 2016, Rob Lothian came to office of Stephanie Peters, a human resources generalist in Respondent's Bay City office. Lothian was very agitated and was worried about being fired. A major concern was that Lothian understood from Shawn Felker, that James Debeau and Raymond Schoof were doing work that would detract from his productivity statistics, some of which was non-company work on company time. Lothian also told Peters that he was afraid that T.J. Teenier would retaliate against him if he complained about this.

Lothian had other concerns as well. These are relevant in assessing Respondent's claim that Lothian had no reason to lie when asked about assertions made about him by Jonathan French.

First of all, Lothian may have been justifiably worried that he was being set up to fail. Greg Culver had ordered Teenier to switch employees from Felker's team to Lothian's team in order to even out their workload. Teenier had resisted this order, telling Culver that Lothian could not handle more direct reports, Tr.1691-93, also see R. Exh. 15 pp.1017-1019, Tr. 525-26.

There is also a rather cryptic note at the beginning of Peters' investigatory notes as to other things that Lothian may have been concerned about:

Rob first started off discussing a recent request of mine to provide Jonell Davis with a copy of the receipt for Rich LesPeance's boot purchase. Rob stated that he forwarded my email request directly to Manager, T.J. Teenier, as T. J. went around the process by

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testify in this proceeding, Tr. 1739.

<sup>15</sup> I do not fully credit Stephanie Peters' testimony or her report entries. The reports, however, Exhs. R-9 through 14, represent the basis upon which Respondent made the termination decisions in this case. Peters' account of her phone calls with French, Schoof and Lothian on October 1, Exh. R-9, p. 10, is particularly incredible. Unlike other parts of her computer report, there are no corresponding handwritten notes for these conversations. Moreover, this part of her report was altered on October 13, G.C. Exh. 40. The fact that her entries regarding a conversation with French at 2:00 p.m. precede her account of her conversation with Lothian at 12:30 p.m., also leads me to conclude the entries for that date are unreliable.

Peters' entry indicating that on October 1, she "reminded" French that meetings were confidential is not credible. There is no evidence that she had spoken to French about the investigation prior to October 1. I also do not credit the entry that indicates that Lothian told her that he had not spoken to anyone about the investigation. There was no reason for Lothian to make such a statement until after Peters' interview with French the next day.

There are also no handwritten notes of Peters' conversation with Rob Lothian on October 3. However, the important point regarding this entry is that the managers who decided to fire French saw the entry about French's union involvement before they made that decision.



purchasing Rich's boots with his T-Card. Rob stated that he didn't want to get into trouble for going around the process so he wanted T. J. to respond to me. I told Rob that I was copied on T. J's email to Jonell, indicating that he approved the transaction. Rob seemed relieved and I assumed that was the end of the conversation.<sup>16</sup>

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Lothian then told Peters that Shawn Felker had shown him photographs that showed T.J. Teenier, Ray Schoof and James Debeau laying sod at Schoof's home on company time.<sup>17</sup> Lothian reported that Felker was angry that Teenier pulled employees for "special projects." Lothian also reported that another "special project" was work done on a haunted house owned by Pat Jozeska,<sup>18</sup> whose business worked on Charter vehicles.<sup>19</sup> Lothian told Peters that he believed that Debeau fixed a drain in a rental unit owned by Teenier and leased to another Charter employee. The only mention of Jonathan French was that French had recently been transferred to Lothian's team from Felker's. Lothian did not report any misconduct on the part of French, Resp. Exh.-9, p. 2.

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Peters told Lothian that he should not share their conversation with anyone at this time. *Id.* p. 4.<sup>20</sup> There is no evidence that she ever told Lothian that he was free to discuss it. This "confidentiality" instruction is critical in assessing the General Counsel's allegation that Respondent terminated Jonathan French in violation of Section 8(a)(3) and (1).

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On September 24 and 26, Peters spoke to Lothian again. On September 26, Lothian reported that James Debeau told him he had been pulled for a "special project" to work on Jozeska's haunted house. Lothian reported that Debeau told him Felker had approved this, but that Felker denied doing so. Peters reported the content of this conversation to Greg Culver, Teenier's boss.

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On September 29, Peters and Culver met with Felker. Peters asked Felker about "special projects" and specifically about the sod laying project. Peters' notes on this point are not relevant to the discharge of French, but are relevant to the discharges of Debeau and Schoof.

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At first, Shawn stated he knows nothing about this, but if it was happening, it was after hours. I asked how he would know that if he didn't know it was even happening. Shawn paused for a moment and then stated that TJ thought some employees were cutting out

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<sup>16</sup> There are no handwritten notes by Peters correlating to this entry, R. Exh. 15, pp. 1017-1019. However, at the bottom of page 1018, there is a note about Rich LesPeance and an audit having something to do with drill bits. On page 1019, Peters' handwritten notes state [Lothian] "feels TJ moved guys to him-only 2 ½ years from retirement. Don't check up on guys. Laid back."

<sup>17</sup> Felker, in this hearing, denied he took any such photographs, an issue that I will address later.

<sup>18</sup> Although referred to as Jozeska in the record, this man's last name may be Hozeska.

<sup>19</sup> It is not clear from Peters' notes that Felker mentioned the haunted house to Lothian. Other than the sod-laying and the haunted house work, no other non-company work was identified by any witness as a "special project."

<sup>20</sup> At Tr. 1460 Peters testified that she told Lothian "that I *prefer* that he talk with me only and not discuss it with other individuals." I find that Peters clearly instructed Lothian not to talk to anyone else about the subject of the investigation. Otherwise, Respondent would not have reacted so adversely to French's statement that Lothian had told him everything about it. At Tr. 1540, in response to my questions, Peters conceded that if Lothian told French about the investigation, he would have violated company policy and her instructions. Her computer entry of October 3 states, "Rob said he knows he is not allowed to talk to anyone about it and has not." Exh. R-9 p. 12.

early and TJ asked him to check into it. Greg then asked Shawn when he checked into the matter and Shawn stated “about 4 or 5 weeks ago” and that he concluded this was being done after work.

5 Felker told Peters that sod was being laid at Schoof’s house. According to Peters, Felker told her that Schoof had told him that Debeau had helped him lay the sod and that he had heard that Teenier also helped. Felker denied having photos of Charter employees laying sod.

10 On Tuesday, September 30, Peters met with Schoof. Schoof told Peters he had recently put down sod at his house and that Debeau had helped him because he had ridden with Debeau that day. Schoof told Peters that he and Debeau worked together that day because Schoof’s truck was being fixed. On at least one occasion, however, Shawn Felker saw both Schoof and Debeau’s trucks at Schoof’s house while they were laying sod, Tr. 866. Schoof also told Peters the work was done after work starting about 5:45 or 6 p.m. He also told Peters that Teenier  
15 stopped by later in the evening and helped him and Debeau lay the sod.

Peters asked Schoof if he knew anything about work done on the Haunted House on Friday, September 26. Schoof said he did not because he worked 4-10 hours shifts and did not work on Fridays.<sup>21</sup> Peters told Schoof he should not discuss his conversation with her or  
20 anything related to this matter with anyone.

Peters also spoke with Debeau on September 30. Debeau told Peters that he had helped Schoof lay sod at his house several weeks ago. According to Peters, when she asked Debeau what time they started, “Jim thought for a moment and then said it was after work, so, around  
25 5:30 or 6 p.m.” Debeau told Peters that Schoof had ridden in his truck that day because Schoof’s phone wasn’t working.

Debeau said that one time he had to do a sweep of an apartment complex and another time drove around all day to verify addresses. That, he said, is what he’d call a special project.  
30 Debeau said he had worked for an hour at the Haunted House while waiting for his vehicle to be repaired. He denied ever doing plumbing work at Teenier’s rental unit.

On the evening of Wednesday, October 1, Schoof called Peters. He told her that French, who Peters had not interviewed yet, had contacted him and wanted to talk to Schoof about the investigation. Schoof told Peters that he informed French that Schoof couldn’t talk about it.  
35 Schoof reported to Peters that French told Schoof that Rob Lothian had sat down with him for about 2 hours and had told him everything. Lothian had performed a safety check on French’s vehicle the day before, September 30, Tr. 143-44.<sup>22</sup>

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<sup>21</sup> Schoof occasionally worked 5-8 hour shifts and did so the week of August 25-29, 2014, which may or may not be relevant to whether he was on company time when laying sod.

<sup>22</sup> French testified the safety check was on September 30; but Respondent’s records indicate it occurred on October 1. Since French told Peters on Thursday, October 2 that the safety check took place on Tuesday (September 30), I conclude that is the date it took place. The fact that Respondent’s records indicated (incorrectly) that the safety check occurred on October 1 confused me during the hearing. However, now the chronology of events is quite clear. Lothian did a safety check of French’s vehicle on September 30. On October 1, Peters called French to come in for an interview on October 2.

This is very significant in that it establishes that French did not, for the first time, come up with the story about Lothian discussing the investigation with him when he met with Peters the next day, Tr. 1198, R. Exh. R-9, p. 9-10. Moreover, the fact that he called Schoof within a day and half after he had been inspected by Lothian, suggests that he was not lying. In fact, had not Peters ordered French to an interview the next day, there is no evidence that French would have reported anything about Lothian to Peters.<sup>23</sup>

On Wednesday, October 1, Peters summoned French to a meeting in her office at 8:30 a.m. Thursday, October 2. At that interview, Peters started by telling French that their discussion was confidential and should not be shared with anyone. According to Peters, French sat back in his chair, smiled and told her he knew everything.

I asked Jon what he knew and he stated that Rob (Lothian) told him everything about the investigation and then added that Rob had a gun. I stopped Jon and repeated his statement back to him, asking how he knew this and when he became aware of this. Jon stated that on Tuesday when Rob did a safety check, Rob told him about the gun.<sup>24</sup>

Exh. R-9 at p. 10.

I went back to the comment about the gun and asked if he had seen it and he said he did not but, that he did see a gun that Rob brought to work once, back when he was a contractor and working for Charter. Jon said Rob brought a gun in his personal car and showed him because he got it as a gift and collected guns. I asked again if he saw the gun and he said no but, Rob was acting “weird” and said he had a gun so I just believed him. He said that Rob did a “weird” safety check on him, talking about being fired and that he was just planning on getting fired for things that were going on.<sup>25</sup>

<sup>23</sup> Nobody had accused French of doing non-company work off the clock and Peters’ notes do not indicate that Lothian ever brought French’s name up prior to October 2-other than to mention that French had recently been transferred from Felker’s team to Lothian’s. Nobody had suggested that French had any first-hand knowledge about the non-company work allegedly performed by other field auditors on company time.

<sup>24</sup> Peters’ handwritten notes in the margins of the October 2 entry have the words “contractor with Sag? with Rob.”, Exh. R-15, p. 1027. Her computer notes of October 10 state that French worked as a contractor for RCH Cable (Saginaw, MI) between 07/2006-08/2009,”Also see Tr.110-111.

<sup>25</sup> French’s statements are somewhat consistent with Peters’ notes of her conversations with Lothian on September 19 indicating that Lothian was in a very agitated state, actually crying at several points during her interview and telling her that he feared he would be fired. Exh. R-4, p. 4. He also appeared to be agitated when she spoke with him on September 26.

French testified at the hearing that Lothian did not mention guns on the day of the safety check, Tr. 227, but then retracted that at Tr. 245. French’s testimony is somewhat confusing and/or contradictory about what Lothian said about guns, when Lothian made these statements, and when he saw Lothian with a gun, Tr. 232-245. However, I find this immaterial. Respondent fired French in part for stating that the Lothian had had a gun a work at some time other than the incident for which Lothian was disciplined. The record establishes that Respondent did not have a reasonable belief that French was making up the story about Lothian having a gun at work. I would note that Respondent could have called Lothian to testify that he never talked to French about having a gun and never had one at work anytime other than the occasion on which he was disciplined in 2000, but did not do so. Thus, I find that on September 30, 2014, Lothian discussed having a gun with French and that he had a gun a work on at least one occasion

French continued to tell Peters that Lothian had brought up the investigation and told him about employees laying sod on company time and somebody told Lothian that there were pictures of this. French's understanding was that the sod was laid 5-7 weeks prior. French did not have any material knowledge about any other allegedly improper conduct. He reiterated that everything he knew came from Lothian.

Peters interviewed Kent Payne on October 2, as well. Payne was initially uncooperative but told Peters that he had performed electrical work at the Haunted House after hours. French's name apparently did not come up in the interview.

French called Peters late in the afternoon of October 2. He asked to be transferred back to Felker's supervision. In response to Peters' inquiries, he said he did not feel threatened at work and was not concerned with his personal safety. When Peters told him she didn't know where the request was coming from, French said he just thought it would be better if he worked for Felker.

On Friday, October 3, Peters called Lothian. Peters' computer notes (for which there are no corresponding handwritten notes) reflect the following:

I asked if he had talked with Jon French this week and if so, had he disclosed anything about the investigation to him. Rob stated, "no" Rob said he seldom talks to Jon because of Jon's union involvement and he is always afraid of saying the wrong thing to Jon and giving him anything to talk to the union about.

I asked Rob if he had brought a gun on company property or had a gun in his Charter vehicle, this week. Rob stated that he only did one time and it was not in a Charter vehicle but it was in his personal car. Rob stated, years ago he got a new gun for his birthday and was excited and wanted to show a couple guys but that the gun was in a box (brand new) and in the trunk of his personal car. Rob was concerned that Jon would say that because it wasn't true.

R. Exh. 9, p. 12-13, Tr. 1498.

It is noteworthy that Lothian did not mention that he had inspected French's vehicle only 2 or 3 days earlier. Two significant things about this are that 1) Respondent displayed no curiosity as to why French called Schoof within 2 days of the safety check, and 2) French never said Lothian has shown him a gun recently. The entry indicating that Lothian was concerned about French talking about Lothian and a gun makes no sense unless he did mention guns to French on September 30.

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other than the one for which he was disciplined in 2000. I also find that Lothian had a gun at work at some time when French was doing work for Charter.

French's remarks about the gun on October 2 were gratuitous. This cuts both ways because these remarks were irrelevant to whether the accusations Lothian was making about, Teenier, Schoof and Debeau were true. They certainly did not impact Peters' investigation.

French testified he could not remember if he told Peters when Lothian showed him a gun and thus would have to say he did not. However, Peters' handwritten notes establish that French told her he saw Lothian with a gun when he worked for Respondent as a contractor, Exh. R-15, pp. 1027-28. That is also confirmed by Peters' entry for October 10, Exh. R-9, p. 19. Peters checked Respondent's records to determine whether French's work as a contractor corresponded to the date on which Lothian was disciplined for having a gun at work.

On October 3 Peters interviewed Aaron Rhode, a Charter employee, who rented a home from Teenier. Rhode said no company employee had performed repairs on the unit and that he was frustrated by the fact that plumbing problems in the house had not been fixed. This interview is significant in that it contradicts some of the accusations made by Lothian to Peters on September 19.

Peters called Lothian again on October 8 to talk to him again about French.<sup>26</sup> Lothian confirmed that he recently had performed a safety check on French's vehicle, which took about a half hour. Lothian denied discussing the investigation with Jon "during this time."

Peters asked Lothian if he had a gun in Charter vehicle or if he showed a gun to French during this safety check or at any time during this interaction with French. Lothian denied doing so.

On October 10, Peters noted that she checked French's employment records and the date that Lothian was disciplined for having a gun at work. That discipline occurred on May 23, 2000, long before French worked for Charter as a contractor or employee. While Peters obviously considered this very important, it begs the question as to whether French was lying. It is possible he saw Lothian with a gun at work on another occasion.

At this hearing French testified that Lothian showed him a gun on one occasion in 2013 and that Lothian had not threatened him.

On October 14, Peters summoned French to her office again. She informed him that his employment with Respondent was being terminated for violations of Respondent's code of conduct and employee handbook. She refused to be more specific than that. At the instant hearing, Respondent contends that it fired French for lying in claiming that Lothian told him all about Respondent's ongoing investigation and stating that Lothian told him that he had a gun on September 30 and that he had seen Lothian with a gun on a previous occasion, Tr. 1425-26.

I credit French's account of his conversation with Lothian because it is uncontradicted. Although I do not draw an adverse inference from Respondent's failure to call Lothian as a witness, he was clearly available to testify. Greg Culver spoke to Lothian on the last day of this hearing, August 16, 2016 and in July 2016, Tr. 1739.

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<sup>26</sup> I note again that there are no handwritten notes of this conversation, or Peters' conversation with Lothian on October 3, and no explanation as to why such notes do not exist.

Secondly, I find that Respondent's belief that French was lying was unreasonable. Respondent made no attempt to investigate French's assertion that Lothian told him about the investigation or that Lothian had a gun-other than to ask Lothian, who denied it. Respondent repeatedly stated that it credited Lothian because he had nothing to gain from his accusations against Teenier, Schoof and Debeau, Tr. 1411. However, he clearly had a motive to deny French's accusations against him. Lothian had been disciplined for having a gun at work many years before, and he may have expected serious discipline and even discharge if Respondent believed the accusations against him. Similarly, if Lothian told French about Respondent's on-going investigation he may have been subject to discipline or even discharge.

While Respondent chose to reject the self-serving denials of misconduct by Teenier, Felker, Debeau and Schoof, it took those of Lothian at face value. This was unreasonable. Someone obviously had told French about the sod incident since he was not present. Respondent had no evidence that the someone was anyone other than Lothian. It made no effort to find out who other than Lothian may have told French about the investigation or the sod incident, Tr. 1427-30.<sup>27</sup>

At the time French told Schoof that Lothian had told him about the investigation and sod-laying incident, Peters had interviewed Felker, Debeau, Schoof and Lothian. It is unlikely that Schoof would have told French about the investigation and then reported this to Peters. Respondent did not seek to determine whether Felker or Debeau had talked to French recently. Before Respondent fired French, it knew that Lothian had face to face contact with French on September 30.

There was also other evidence available to Respondent during its investigation that corroborated French's statements to Peters about Lothian's breach of her confidentiality instructions. When Peters interviewed Tom Schuetz from plant security on October 6, Schuetz reported to her that on October 1, Lothian had tried to talk to him about things he had reported to HR, Exh. R-9, p. 16. This was the day after Lothian discussed the investigation with French.

On October 6, Peters also interviewed Lucas Watkins, a TQA tech.<sup>28</sup> He told Peters that he pretty much knew most of what was going on-second hand. Watkins indicated that he knew

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<sup>27</sup> At Tr. 1541 Peters raised the possibility that French had heard about the investigation from Pat Jozeska. There is no evidence that French saw or talked to Jozeska between the beginning of Peters' investigation on September 19, and October 2, when Peters interviewed French. French gave no indication that he had talked to Jozeska and Peters did not ask Jozeska whether he had talked to French.

I would also note that in his interview with Peters, French was very detailed about his conversation with Lothian, for example relating how Lothian discussed his financial situation. Respondent had absolutely no reasonable basis for concluding that French was lying about anything.

<sup>28</sup> Greg Culver's testimony that Watkins was interviewed because he asked to speak to Peters and himself is incorrect. Peters told Watkins to come in for an interview, Exh. R-9, p. 18.

Culver's testimony is riddled with what are at best inaccuracies; some benign, some material. At Tr. 1692, he testified that the charging parties were transferred to Lothian's team in July or August; the correct month is September. At Tr. 1698, he testified that Felker locked his phone when asked about photos of the sod laying. If this would be true, it would be reflected in Peters' notes. Exh R-9, pp. 6-7. At Tr. 1708, Culver testified that he began considering disciplining or discharging French after learning that French had reached out to Ray Schoof after being told not to discuss the investigation. This assertion

that there was an ongoing investigation relating to the laying of sod at Ray Schoof's house. Peters apparently never bothered to ask Watkins where he learned about the investigation (as opposed to the fact that sod-laying had occurred).<sup>29</sup> I find that Watkins acquired much or all of his information from Lothian. This is something Peters and Culver could have deduced with the slightest exercise of some curiosity.

Watkins worked or had worked for Lothian. Lothian and Watkins had a conversation between September 29 and October 3, apparently at Respondent's Bay City office, Exh. R-9, p. 12, 17. During that conversation Lothian told Watkins that he did not approve Debeau's work on a special project. This alone would appear to violate Peters' instructions to Lothian. Moreover, despite having been told about the confidentiality of the investigation, Lothian, according to Watkins, carried on telephone conversations with Debeau and Felker in Watkins' presence that related to the subject of Peters' investigation.

Respondent's inquiry into French's assertions about the gun was similarly half-hearted. The fact that French did not work for Charter when Lothian was disciplined for having a gun at work does not mean that Lothian did not have a gun at work on other occasions. Respondent made no effort to find out whether this was true or not.<sup>30</sup> Indeed, Kent Payne, who of all the witnesses in this case had the least reason to lie under oath, testified that Lothian showed him a bolt-action rifle in the Bay City office in 2012, and saw the outline of a derringer in Lothian's pocket in 2013 or 2014, Tr. 1302-03.<sup>31</sup> Payne reported seeing the outline of the derringer to Harth Goulette and Greg Culver after French had been terminated. Tr. 1305-06, 1353.<sup>32</sup> Ray Schoof also testified that Lothian had showed him a gun in his company vehicle, Tr. 1205-07.

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is either simply incorrect or an outright fabrication. At Tr. 1710, Culver denied discussing French with Sharon Farquhar (née Olds). She testified at Tr. 1381-1384, that she made a recommendation to Culver that French be terminated. The discrepancy raises questions as to the credibility of Respondent's witnesses generally as to who was involved in the termination decisions and to what extent.

Finally, Culver testified at Tr. 1742 and 1744 that sought to review the disciplinary records of French, Debeau, Schoof, Felker and Teenier in June, July or August of 2014, but on recross examination testified that he did not request these records until after Peters' investigation started September 19, 2014. On course, if Culver requested these disciplinary records between June-August, it would strongly suggest that the discharges were pretextual and related to the union activity in June and July.

<sup>29</sup> Watkins said he learned that employees were laying sod at Schoof's from Pat Jozeska. Jozeska denied this. Watkins did not assert that Jozeska told him about the on-going investigation. Peters' notes, Exh. R-9, p. 17, recount that Watkins learned about the sod laying before he knew there was an HR investigation.

<sup>30</sup> At Tr. 1051, James DeBeau testified that Stephanie Peters asked him if he had ever seen Rob Lothian with a gun in his office when she interviewed him on September 30. This testimony is clearly incorrect and the product of a faulty memory. Peters' notes of her one and only interview of DeBeau do not indicate that she asked DeBeau anything about Lothian, R. Exhs. 9, 13 and 15. Moreover, the issue of whether Lothian had a gun at work did not arise until French brought it up on October 2, two days after Peters interviewed DeBeau.

<sup>31</sup> Payne received a written warning for being uncooperative in the investigation of October 2014, but left Charter's employment voluntarily.

<sup>32</sup> Culver, who testified after Payne, made no attempt to contradict Payne's testimony that he told Culver that he saw the outline of a derringer in Lothian's pocket.

There is no evidence that Respondent made any further investigation as to whether Lothian had ever had a gun at work at times when French was working for Charter or its contractor.

All this is relevant to my conclusion that the reasons for which Respondent fired French were pretextual. In its post-trial brief, Respondent argues that it had a reasonable belief that French was lying about Lothian having a gun at work. It completely avoids discussing its belief that he was lying about Lothian violating Respondent's confidentiality instruction on September 30, by telling him about the HR investigation. Indeed, in its discussion of Lothian's September 30, 2014 safety check at pages 50-51 of its brief, Respondent argues that French's testimony that Lothian discussed French's union involvement is not credible. It makes no such claim about his testimony about Lothian's discussion about the sod incident and making a complaint to human resources. Nor does it do so at page 52 in defending Peters' confidentiality instructions.

Respondent's investigation report makes it absolutely clear that this was a basis for French's discharge. The second to last entry in that report concerns Peters' call to Lothian on October 8, asking him whether he had discussed the investigation with French.

More importantly, one of the managers who participated in the termination decision admitted, that French's "lie" about Lothian's disclosures was a primary reason for his discharge. When I asked Sharon Farquhar (née Olds), Senior Director, Regional Human Resources, to be specific about the dishonesty that caused Respondent to terminate French, she replied, "It was the statement that he [Lothian] had a gun at work and it was a statement that he had spent 2 hours telling him all about the investigation." "Those were the primary reasons..." Tr. 1426-27. I regard the absence of any discussion about its reliance of this "lie" as opposed to "lie" about the gun as an admission that Respondent has no reasonable basis for concluding that French was lying about his September 30 conversation with Lothian. Thus, one of the two reasons for French's discharge is obviously pretextual.

Moreover, with regard to both reasons for French's discharge, it was unreasonable for Respondent to conclude that French was lying simply on Lothian's say-so. I also rely on the fact that French's assertions about Lothian did not in any way interfere with Peters' investigation into the conduct of Teenier, Schoof and Debeau. They had no bearing on whether Lothian's accusations regarding "stealing time" were true or not.

In order to prove a violation of Section 8(a)(3) and (1), the General Counsel generally must show that union activity or other protected activity has been a substantial factor in the employer's adverse personnel decision. To establish discriminatory motivation, the General Counsel must show union or protected concerted activity, employer knowledge of that activity, animus or hostility towards that activity and an adverse personnel action caused by such animus or hostility. Inferences of knowledge, animus and discriminatory motivation may be drawn from circumstantial evidence as well from direct evidence.<sup>33</sup> Once the General Counsel has made an initial showing of discrimination, the burden of persuasion shifts to the employer to prove its affirmative defense that it would have taken the same action even if the employee had not

<sup>33</sup> *Flowers Baking Company, Inc.*, 240 NLRB 870, 871 (1979); *Washington Nursing Home, Inc.*, 321 NLRB 366, 375 (1966); *W. F. Bolin Co. v. NLRB*, 70 F. 3d 863 (6th Cir. 1995).



engaged in protected activity. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981).

However, if it is determined that the reasons given by the employer are pretextual, that defeats any attempt by the employer to show that it would have disciplined or discharged the discriminatee absent his or her protected/union activities, *Rood Trucking Co.*, 342 NLRB 895, 897-98 (2004). In such cases it is not necessary to engage in the second part of the *Wright Line* analysis, i.e., whether Respondent met its burden of proving that it would have disciplined or discharged an employee for non-discriminatory reasons.

The General Counsel had met his burden under *Wright Line* and *Rood Trucking* with regard to Jonathan French. I thus find that Respondent violated Section 8(a)(3) and (1) in terminating his employment. On the other hand, I find the General Counsel has not met this burden with regard to James Debeau and Raymond Schoof.

*Evidence regarding James Debeau*

Respondent hired James Debeau in March 2013 and fired him on October 14, 2014. While employed at Charter, Debeau generally worked five 8-hour days. Employees signed out from work on a honor system. Debeau normally signed out between 4 and 4:30 p.m.

Prior to working for Charter, Debeau had worked for an employer whose employees were represented by a local of the Sheet Metal Workers International Union. He did not engage in any union activity while working for Charter and there is no evidence that anyone in Charter management suspected Debeau of supporting the IBEW or any other union—except the following. T. J. Teenier testified that in a conference call, Technical Operations Manager Bob Morgan identified Debeau, Schoof, Payne, Ryan Lange and Andrew Wakowski as being involved with the Union, Tr. 385-86. Morgan, who still works for Respondent as a supervisor and agent, did not testify in this proceeding. Thus, Teenier's testimony is uncontroverted, although not corroborated by any of Respondent's notes of these conference calls.

However, this evidence does not provide a sufficient reason to infer that Debeau's termination was related to suspected union or protected activity. I so conclude because I find that Respondent reasonably believed that Debeau had performed non-company work on company time. Respondent fired Debeau ostensibly for two reasons: laying sod at Ray Schoof's house while on company time and working at Pat Jozeska's haunted house on company time, Tr. 820.

Debeau testified that he worked at the haunted house on 3 occasions. Further he testified that he had permission to work at the haunted house while getting his vehicle repaired on the third occasion, which I infer was on September 26, 2014. The circumstances, however, suggest that Respondent had good reason to believe that the permission to do this was improperly granted by T. J. Teenier, Tr. 1039-43.

Stephanie Peters' notes, Exh. R-9, p. 5, recount that Rob Lothian told her on September 26, that Debeau informed Lothian that he was going to be doing work at the haunted house that morning. Those notes indicate that Debeau told Lothian that Shawn Felker had approved this

work. In this hearing Felker denied giving Debeau such permission, Tr. 874. At the hearing, Debeau testified that Lothian and Teenier approved his work at the Haunted House. It is clear that Lothian if he did so, Lothian approved the work begrudgingly and only because he thought Teenier had authorized it.

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Even assuming that Respondent treated Debeau unfairly with regard to the Haunted House, it reasonably believed that Debeau helped Schoof lay sod at Schoof's home on company time.

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I find this record insufficient to conclude that Respondent terminated Debeau in retaliation of any protected activity on his part. Further, I find the General Counsel has not met his burden of proving that Debeau would not have been terminated but for protected activity on the part of others.

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A showing that the Employer had knowledge of union activities of each discharged employee is not necessary, where an employer lays off or eliminates a portion of the work force for the purpose of discouraging union support or to retaliate against its employees because of the union activities of some employees. "Common sense dictates that when employees are discharged for individual reasons, then the Employer's knowledge for each employee's union activity and the Employer's motivation for each discharge are the relevant inquires; but when the Employer makes a single decision to fire 15 people to [discourage union support], then the relevant inquiry is the Employer's motivation for that single decision." *Dillingham Marine & Mfg. Co. v. NLRB*, 610 F.2d 319, 321 (5<sup>th</sup> Cir. 1980).

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Nevertheless, I find the evidence is not sufficient to establish that Debeau and Schoof (as well as Felker and Teenier) were terminated to cover up Respondent's discriminatory discharge of French. More likely, Respondent, when deciding to terminate Teenier, Felker, Debeau and Schoof, concluded that it had found a convenient pretextual reason to fire French.

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#### *Evidence regarding Raymond Schoof<sup>34</sup>*

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Respondent hired Raymond Schoof in August 2012. Schoof had worked for a union contractor prior to working for Charter. However, he did not engage in any union activity while working in Charter. The fact that Greg Culver made a point of talking to Schoof on July 16, G.C. Exh. 29, indicates that Respondent may not have been certain that Schoof wasn't engaging in union activity. Culver had planned to ride with Schoof on his route on the afternoon of July 17, but decided not to do so.<sup>35</sup> Moreover, T.J. Teenier's uncontradicted testimony at Tr. 385-86 indicates that Supervisor Robert Morgan identified Schoof as being involved with the Union.

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<sup>34</sup> Schoof's testimony is generally confusing and unreliable. He stated that he has difficulty reading and when testifying appeared to have some other cognitive difficulties. Schoof testified that he has a terrible memory, Tr. 1276, and his testimony certainly seems to confirm this. There is no question that some of Schoof's testimony, if credited, is very helpful to Respondent's case with regard to his termination and Debeau's termination.

<sup>35</sup> I credit Shawn Felker and Ray Schoof's testimony in this regard. Greg Culver testified that he planned to ride with Jonathan French all day. However, G.C. Exh. 29 establishes that Culver spoke to Schoof on July 16 and the record contains no explanation for this contact. Culver had a conversation with Shane Robinson on July 16, which in part was motivated by a desire to determine whether he had union

Nevertheless, for the reasons I have found that the General Counsel has not proved that Respondent violated the Act in terminating James Debeau, I find that it has not done so with regard to Raymond Schoof.

Given what I regard as Respondent's reasonable belief that Schoof was doing non-company work on company time, Tr. 826, I believe the scant evidence supporting the General Counsel's prima facie case is insufficient to find discriminatory motivation with regard to Schoof's termination.

*Factual findings regarding the sod laying incident and Respondent's conclusion that it occurred on company time*

The terminations of Debeau, Schoof and to a much lesser extent French are related to the laying of sod at Schoof's home.<sup>36</sup> The record indicates that Respondent had good reason to suspect that this work was being done on company time.

I would note that neither the termination documents nor the investigation reports for Schoof and Debeau mention the sod-laying incident as the reason for their terminations. Moreover, this incident was not mentioned to them when they were terminated. In the hearing, only HR Manager Harth Goulette unequivocally testified that Schoof and Debeau were fired for laying sod at Schoof's house on company time. Tr. 820 and 826. Respondent's other witnesses were somewhat evasive on this point, although Greg Culver did testify that Schoof was fired for laying sod on company time, after first testifying that Schoof was fired for dishonesty and interfering with the company's investigation, Tr. 1701, 1709.

The termination documents focus on Schoof and Debeau's dishonesty during the investigation. They could only have been dishonest if they were lying about laying the sod on company time. There is no evidence that either was dishonest about anything else. Debeau, for example, said nothing that was untrue, other than possibly that he only worked at Schoof's house after hours.

One of the curious things about this case is that until the last day of the hearing there was no evidence as to what specific day or days the sod laying occurred. One problem with the General Counsel's case is that Schoof generally worked 4 ten hour days and Debeau generally worked 5 eight hour days. This raises the question of what Debeau did while Schoof was still on the clock. That question would be resolved if the sod work was done the week before Labor Day, August 25-29 when they both worked 8 hour shifts. Given that Peters interviewed Debeau and Schoof September 30, I find it strange that they would not be able to relate the work to the week before Labor Day or their transfer from Felker's crew to Lothian's crew.

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sympathies.

<sup>36</sup> This incident also figures prominently in the discharges of Teenier and Felker, which are not before me.

On September 19, Rob Lothian told Stephanie Peters that it occurred somewhere in the September 9 time frame, R. Exh. 9, p. 3-4. The General Counsel elicited testimony on August 16, 2016, that suggests that the sod was delivered to Ray Schoof's home during the week of August 25-29, 2014. This, even if correct, is not probative of when it was put on the ground or when Schoof, Debeau and Teenier worked at Schoof's house.<sup>37</sup>

The record shows that on one day or two, Schoof rode with Debeau during their workday and that Debeau helped Schoof lay sod at Schoof's home on one or two of those days. T.J. Teenier came to Schoof's home on one day and helped lay sod. Shawn Felker also stopped by Schoof's house.

Felker testified that on the day (or one of the days) that he saw Debeau and Schoof laying sod at Schoof's house he was concerned that they might be leaving work early because he was unable to contact them by phone, Tr. 866, 928-36, 947-48. This certainly supports Respondent's suspicions that Debeau and Schoof were doing work at Schoof's house on company time.<sup>38</sup>

Lothian reported to Peters that Felker showed him photographs of people laying sod at Schoof's house. Felker told Peters he did not take any photographs. At the hearing in this matter, Felker testified that he did take a photo of the completed sod project about 2 weeks later on his personal phone. He did not tell that to Peters. If Felker were trying to absolve Debeau and Schoof of misconduct, I would expect that he would show Peters the photo. Cellphones generally show the time and date a picture was taken.

Moreover, why Felker would take a photo of the completed project remains unexplained. In its totality the evidence suggests that when Felker discovered Schoof and Debeau working at Schoof's they were still on the clock. His answers to Peters and at this hearing testimony suggest that he was trying to protect them from disciplinary measures and as a result Felker lost his own job.

*The General Counsel's Theory that French, Schoof and Debeau were terminated because of their association with Teenier*

The General Counsel argues that the terminations of the Charging Parties were the result of Respondent's animus towards T. J. Teenier, who it regarded as an "inside man" for the Union. There is some evidence to support this theory. Other managers were upset and suspicious of Teenier because he told Jon French and Shane Robinson that their names had come up in a management conference call, Tr. 790-91, G.C. Exh. 27. Human Resources Director Harth Goulette testified that upper management thought that Teenier "wasn't being honest with us or that he was sharing too much information with employees," Tr. 791.

<sup>37</sup> Schoof, Debeau and Teenier may have been working at Schoof's home before the sod was delivered, Felker's testimony suggests as much, Tr. 935-36.

<sup>38</sup> The record indicates there are a number of reasons that a field auditor might not answer his phone, for example, if he was on a ladder or fear that he might be kicked out of Respondent's communications system. Nevertheless, despite legitimate reasons for which Debeau and Schoof might not have answered their phone, Felker suspected they might be leaving work early.

On July 21, 2014, Robert Morgan passed on to Lloyd Collins, Director for Field Operations, and David Slowik a report from Jason Zacharko (now a supervisor; then a rank and file employee), G.C. Exh. 35. Zacharko reported that Shane Robinson told Zacharko that he had an “inside man.” Zacharko continued to report that Robinson never stated who the inside man was but on a few occasions told Zacharko that he was receiving information from Teenier. Zacharko also reported that Teenier and Robinson’s wives were close friends.

In the July 17 conference call, someone, apparently Lloyd Collins, noted that Teenier seemed connected to Shane Robinson, G.C. Exh. 29.

Teenier testified that during a conference call in July, Regional Vice President Joseph Boullion observed that everyone suspected of supporting the Union reported to Teenier through Shawn Felker. Boullion did not testify and Teenier’s statement was not contradicted by any other agent of Respondent.

Teenier also testified that Boullion instructed him to isolate the charging parties and Payne from other employees and that Boullion instructed Robert Morgan to do the same with Ryan Lang and Andrew Wakowki, Tr. 385-86. Since neither Boullion nor Morgan testified, Teenier’s testimony in this regard was not contradicted. Respondent asked Greg Culver whether he had ever heard anyone give instructions to isolate any employees. Culver testified he had not, Tr. 1653-54, but that begs the question as to whether Boullion gave these instructions when Culver was not present. Moreover, for reasons stated in footnote 27, I decline to take any of Culver’s testimony at face-value. Thus, I credit Teenier on this point.<sup>39</sup>

Human Resources Director Harth Goulette conceded that Schoof’s association with Teenier, Felker, Debeau and French was a factor in Respondent’s decision to terminate him, Tr. 828-30, 836.

Despite this evidence, I find that it is too speculative to conclude that the Charging Parties were terminated as the result of Respondent’s suspicions about Teenier’s possible support of the Union. Moreover, I find that even if this did play a part in the terminations of Schoof and Debeau, Respondent reasonably believed that the two employees were doing non-company work on company time. Further, I find that Respondent acted upon that belief.

#### *Conclusion with regard to the terminations of Schoof and Debeau*

Assuming that the General Counsel made out a prima facie case the Schoof and Debeau were terminated in violation of Section 8(a)(3) and (1), I find that Respondent met its burden that it would have terminated them even in the absence of animus towards any suspected union activity on their part or that of Teenier, or French. Respondent had sufficient reason to believe

<sup>39</sup> Shawn Felker testified that Culver told him to move French in order to isolate him from other employees and to move the rest of the field auditors so that French’s assignment would not appear to be discriminatory, Tr. 860. Culver’s testimony at Tr. 1653 contradicts Felker. Given that I credit Teenier’s testimony that he was instructed to isolate Felker’s field auditors, I need not resolve the credibility issue regarding Culver and Felker.

that Schoof and Debeau were doing non-company work on company time and therefore had, and acted upon, a legitimate non-discriminatory reason for discharging them.

The General Counsel's reliance on disparate treatment with regard to Schoof and Debeau is beside the point. Assuming they were disparately treated, the question remains why? I find they were not disparately treated because of their own protected activity. I conclude they were not disparately treated due to protected activity on the part of French, and it is too speculative to conclude that they were disparately treated because of suspected union sympathies on the part of Teenier.

*The Independent Section 8(a)(1) violations*

*Respondent's Section 10(b) defense*

There is no question that a number of the Section 8(a)(1) allegations in the complaint are predicated on an amended charge filed more than 6 months after the alleged violations occurred. However, in *Redd-I*, 290 NLRB 1115 (1988), the Board held that allegations made in an untimely filed charge may be considered to be timely filed if they are legally and factually "closely related" to an otherwise timely filed charge. The Board looks at whether 1) the otherwise timely allegations involve the same legal theory as the allegations in a timely charge; 2) whether the otherwise untimely allegations arise from the same factual situation or sequence of events as the allegations in a timely charge; and 3) "may look" at whether a Respondent would raise the same or similar defenses to both the untimely and timely charge.

The charges filed within 6 months of the allegations in this case include the terminations of all three charging parties, the alleged statement and threat by Rob Lothian to Jonathan French on September 30, 2014 and French's statement in his initial charge that "two supervisors and a manager" told him that he had been "outed" as the mastermind by the union activity.

I find that many of the Section 8(a)(1) allegations in this case should be dismissed under the *Redd-I* test. Complaint paragraphs 8 and 9 contain numerous allegations of illegal conduct by manager T.J. Teenier and Shawn Felker. Since Teenier and Felker were fired at the same time as the charging parties, I conclude that their conduct is not closely related to Respondent's terminations of the charging parties—except allegations that Teenier and Felker gave one or more of the charging parties the impression that their union activities were under surveillance and that Teenier interrogated French. I would also note that Felker, a witness called by the General Counsel, denied ever talking to any of the Charging Parties or about the Union, Tr. 882. He also denied asking Kent Payne to make inquiries regarding the union activity of other employees, Tr. 974-75.

The complaint allegations related to an allegedly unlawful rule, paragraphs 6 and 15(c) are also insufficiently related to a timely charge to meet the *Redd-I* criteria.<sup>40</sup> I reach the same

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<sup>40</sup> While it is true that Respondent cited violation of the employee handbook as a reason for the discharges, the manner in which the employees violated the handbook appears to have no relationship to protected activity, see, e.g., Exh. R-9, p. 20. It is also difficult to discern any relationship between the language in the termination documents and the discharges. I would characterize the language as a non-

conclusion with regard to paragraph 11(b) [interrogation by Lothian].<sup>41</sup> Thus, I dismiss the complaint allegations in paragraph 6, 8(b),(c),(e),(f) and (g) (ii)-(iii) and 9 (a)-(b), 11(b), and 15(c) on Section 10(b) grounds.

5 On the other hand, I find that complaint paragraphs 7, 8(a), 8(d), 10 and 12, 13 meet the *Redd-I* test. Paragraph 7 alleges illegal surveillance by three supervisors on July 15 when the Union distributed flyers at Respondent's Saginaw office. Although, I find this to be sufficiently closely related to French's charge, there is insufficient evidence to support it. First of all, the union activity was out in the open and there is nothing illegal about the supervisors going out in  
10 the parking lot to observe it, *Fred'k Wallace & Son, Inc.*, 331 NLRB 914, 915 (2000). There is absolutely no evidence that any supervisor took notes, as alleged in paragraph 7.

15 Terry Teenier testified that he was instructed by his boss, Greg Culver, to keep track of which employees were taking union flyers and to take notes of this. Teenier testified further that he passed these instructions on to supervisors Shawn Felker and Chad Erskine. He also stated that Erskine passed on some names to him, Tr. 378. However, according to Teenier, Erskine did this from memory not from notes, Tr. 503. Erskine denied giving names to anyone. I have no basis for crediting Teenier over Erskine, so I dismiss complaint paragraph 7.

20 Paragraph 10 alleges closer scrutiny of employees (i.e., French) by Greg Culver in July 2014. Since Culver is the person, or one of the persons, who decided to fire the charging parties, I believe this allegation is closely related to the timely charges. It is part of the sequence of events leading to French's termination.

25 Similarly, I find paragraph 12 to be closely related to a timely charge in that Respondent's "confidentiality" instruction during the investigation was a major factor in the termination of French and hindered the three charging parties in defending their conduct during Respondent's investigation.

30 Paragraph 13 is sufficiently closely related the timely filed charges because T. J. Teenier's uncontradicted testimony established that he was instructed by Regional Vice President Joseph Boullion to isolate Felker's entire crew, which I infer was due to suspicion that some or all of them were sympathetic to the Union.

35 *Complaint paragraph 8 (a) & (d):*  
*T.J. Teenier gives Jon French the impression that his union activities are under surveillance, and interrogates him about union activities, on or about July 16, 2014*

40 Jonathan French testified that on about July 16, the day after union organizers had passed out union flyers at Respondent's Saginaw office, Teenier drove out to his location and told French to get into his vehicle. Teenier asked French if he knew of anyone connected with the distribution of flyers. This testimony was corroborated by Teenier. The account of this

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sequitur.

<sup>41</sup> There is no evidence to support 11(b).

conversation does not appear in the affidavits French gave to the General Counsel during investigation of his charges on November 14, 2014 and June 23, 2016. However, I credit it. G.C. Exh. 34 establishes that higher management instructed Teenier to talk to French about the union activity.

Additionally, G.C. Exh. 29, Harth Goulette's notes of July 17, 2014, confirms that Teenier spoke with French and told him that Respondent was investigating his possible connection to the IBEW flyers. Thus, the allegations in complaint paragraphs 8(a) and (d) are established by Goulette's notes and Teenier's testimony.

*Complaint paragraph 9(c) alleged violation by Felker*

There is no evidence to support the allegation in complaint paragraph 9(c) that Shawn Felker told employees over the phone that he knew that they had spoken to a union representative. This allegation is dismissed.

*Complaint paragraph 10: Greg Culver subjects Jonathan French to closer scrutiny:*

Greg Culver, Teenier's boss, came to Respondent's Saginaw office on July 17, 2014, 2 days after the union handbilling. Prior to his arrival he asked to "ride-along" with Jonathan French as French performed his normal field auditor duties.

Culver's ride-along and inquiries to French, were, at least in part, motivated by a desire to find out which employees were connected to the distribution of the IBEW flyers. I find that Respondent, by Culver, engaged in surveillance of French's protected activities in violation of Section 8(a)(1).

*Complaint paragraph 11: Alleged violations by Lothian*

There is no evidence to support complaint paragraph 11(b) that Respondent by Rob Lothian interrogated Jonathan French about union activities on September 30, 2014. On the other hand, French's uncontradicted testimony establishes that Lothian gave French the impression that Respondent was watching French's union activities and that Lothian impliedly threatened French. The threat while not specific would lead a reasonable person to conclude that they may be disciplined or discharged in part due to their union activities.

*Complaint paragraph 12: Respondent by Stephanie Peters issued overly broad directives to employees not to discuss Respondent's disciplinary investigation.*

On about October 1, 2014, Charter Human Resource Generalist Stephanie Peters told Jonathan French not to talk to anyone about what was discussed in the interview. Peters gave the same instruction to all the employees, supervisors and managers she interviewed in connection with her investigation.

I find that Respondent did not violate the Act in giving this "confidentiality" instruction.



In *Caesar's Palace*, 336 NLRB 271, 272 (2001) the Board held that the employer did not violate Section 8(a)(1) by instructing employees not to discuss an ongoing drug investigation. It observed that employees have a Section 7 right to discuss discipline or disciplinary investigations. However, it found that Caesar's established a substantial and legitimate business justification which outweighed its infringement on employees' rights. The Board in footnote 5 made it clear that it is the Respondent's burden to establish a legitimate and substantial business justification.

In *Hyundai America Shipping Agency, Inc.* 357 NLRB 860 (2011) the Board found the employer violated Section 8(a)(1) by promulgating, maintaining and enforcing an oral rule prohibiting employees from discussing with other persons any matters under investigation by its human resources department. This rule was a blanket prohibition, applying to all matters regardless of the circumstances. The employer's rule in *Boeing Co.*, 362 NLRB No. 195 (2015), was similarly broad.

In *Caesar's Palace*, an employer witness testified that it never explained the purpose of the confidentiality instruction to the employees during the investigation, 336 NLRB at 273. The Board appears to have inferred from the circumstances of the investigation that the employer had a legitimate and substantial justification for its confidentiality instructions. I believe this could be inferred in many investigations in which the dangers of evidence being destroyed or fabricated, and witness intimidation are obvious. In this vein I would note the Rule 615 of the Federal Rules of Evidence, in requiring a judge to order the sequestration of witnesses upon the request of any party, is a tacit recognition of this danger.

In this case, I find that Respondent's legitimate reasons for instructing each employee not to discuss its investigation are patently obvious. There was an obviously danger of the employees coordinating their stories or suggesting "helpful" interview answers to others. Thus, I find that Respondent's burden of establishing that these interests outweigh its infringement on employees' rights has been met.

#### *Paragraph 13 (Isolation of the Charging Parties)*

This record establishes that shortly after the union flyers were distributed, 3 members of Shawn Felker's crew, French, Schoof, and Debeau were assigned to do work outside of the Saginaw system. Although field auditors working out of Saginaw office had worked in these areas before, the record, specifically T. J. Teenier's uncontradicted testimony at Tr. 385-86, shows that in July and August 2014 this assignment was related to suspected union activity by some or all of them. The assignment was motivated by a desire to prevent Jonathan French, in particular, from interacting with other employees.

#### *Conclusions of law*

1. Respondent violated Section 8(a)(3) and (1) in discharging Jonathan French.
2. Respondent did not violate the Act in discharging James Debeau and Raymond Schoof.
3. Respondent, by T.J. Teenier, violated Section 8(a)(1) by giving Jonathan French the

impression that his union activities were under surveillance and interrogating him on or about July 16, 2014.

4. Respondent, by Greg Culver, violated Section 8(a)(1) by subjecting Jonathan French to close scrutiny on July 17.

5. Respondent, by Rob Lothian, violated Section 8(a)(1) by creating the impression that Jonathan French's union activities were under surveillance.

6. Respondent, by Rob Lothian, violated Section 8(a)(1) by impliedly threatening Jonathan French on September 30, 2014 in part due to French's union activities.

7. Respondent violated Section 8(a)(3) and (1) of the Act by assigning the charging parties to work outside of the Saginaw system in response to suspicions of union activity on the part of all or some of the charging parties.

8. Respondent did not violate the Act in instructing employees not to discuss its investigation with other employees, supervisors or managers.

The Respondent, having discriminatorily discharged Jonathan French, must offer him reinstatement and make him whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

Respondent must also compensate Jonathan French for his search-for-work and interim employment expenses regardless of whether those expenses exceed his interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

Respondent shall file a report with the Social Security Administration allocating Jonathan French's backpay to the appropriate calendar quarters. Respondent shall also compensate the discriminatee for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year, *Latino Express, Inc.*, 359 NLRB No. 44 (2012).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>42</sup>

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<sup>42</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

## ORDER

The Respondent, Charter Communications, LLC, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against any employee for supporting the International Brotherhood of Electrical Workers or any other union.

(b) Giving employees the impression that their union or other protected activities are under surveillance.

(c) Interrogating employees about their suspected union or other protected activities.

(d) Subjecting employees to closer scrutiny due to their actual or suspected union or other protected activities.

(e) Impliedly threatening employees with adverse personnel actions on account of their actual or suspected union or other protected activities.

(f) Assigning employees to work locations in order to isolate them from other employees on account of their actual or suspected union or other protected activities.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of the Board's Order, offer Jonathan French full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Jonathan French whole for any loss of earnings, search-for-work and interim employment expenses, and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.


(c) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharge and within 3 days thereafter notify Jonathan French in writing that this has been done and that the discharge will not be used against him in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its Bay City and Saginaw, Michigan facilities copies of the attached notice marked "Appendix."<sup>43</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 16, 2014.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., November 10, 2016




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Arthur J. Amchan  
Administrative Law Judge

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<sup>43</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## **APPENDIX**

### **NOTICE TO EMPLOYEES**

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### **FEDERAL LAW GIVES YOU THE RIGHT TO**

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting the International Brotherhood of Electrical Workers (IBEW) or any other union.

WE WILL NOT give you the impression that your union or other protected activities are under surveillance.

WE WILL NOT interrogate you about your suspected or known union or other protected activities.

WE WILL NOT subject you to closer scrutiny due to your actual or suspected union or other protected activities.

WE WILL NOT impliedly threaten you with adverse personnel actions on account of your actual or suspected union or other protected activities.

WE WILL NOT assign you to work locations in order to isolate you from other employees on account of your actual or suspected union or other protected activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer Jonathan French full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Jonathan French whole for any loss of earnings less any net interim earnings, search-for-work and interim employment expenses (regardless of interim earnings) and other benefits resulting from his discharge, plus interest compounded daily.

WE WILL file a report with the Social Security Administration allocating Jonathan French's backpay to the appropriate calendar quarters.

WE WILL compensate Jonathan French for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharge of Jonathan French, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

CHARTER COMMUNICATIONS, LLC

(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlrb.gov](http://www.nlrb.gov).

477 Michigan Avenue, Room 300, Detroit, MI 48226-2543  
(313) 226-3200, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at [www.nlrb.gov/case/07-CA-140170](http://www.nlrb.gov/case/07-CA-140170) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.



**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (313) 226-3244.